

104. On or about January 6, 2004, Mr. Morel had entered into an exclusive representation agreement with Corbis, Inc. (“Corbis”), which is a premium creative photography and editorial photo agency, founded by Bill Gates and headquartered in Seattle, Washington. Corbis is in fierce competition of Getty in the licensing of iconic news photographs as well as rights managed stock photography. Mr. Morel’s agreement was for a year term, renewable automatically unless terminated with notice. Under that agreement, Corbis would be the exclusive worldwide licensing agent for those images which Mr. Morel sent to Corbis and which images Corbis accepted. Mr. Morel retained copyright in his photographs under the terms of the agreement, subject to any rights granted to Corbis.

105. At 12:49 p.m. EST on January 13, 2010 Mr. Morel e-mailed Corbis Photo Editor Rita Rivera, saying “I never send anything to Getty. I’m going to send you today stuff no time for caption no power here in the hotel.”

106. On or about January 13, 2010, in the afternoon, Mr. Morel transmitted images taken on January 13, 2010 to Corbis (“January 13 Images”). The January 13 Images were accepted by and posted to Corbis on or about 1:35 p.m. on January 13, 2010. Corbis currently is the exclusive agency with regard to Mr. Morel’s Haiti Earthquake Images.

107. On January 14, 2010 at 10:27 a.m., Rita Rivera of Corbis e-mailed Mr. Morel, informing him “we are trying to correct caption, one has your name and Getty, so half of it is ok! The other has the person who stole your images, Lisandro. We are working to correct this with NY Times and other news outlets.”

108. In “Haiti: the weight of words, the error of photos” (January 14, 2010, 12:41 p.m. EST) from 20 Minutes Fr., the author writes:

The challenge for photo agencies is to verify in real time, the source of images. Reuters chose caution if they broadcast the pictures of its own photographers, even if it means having less and less quickly. AFP photo, she sometimes accepted files stating that they “came from Twitter.”

But in this case, how to distinguish between Twitter account as a real photographer Daniel Morel and that of a Lisandro Suero, unknown to the battalion, which probably broadcasts at the speed of light, on-site micro-blogging photos without copyright. And so is good publicity. Contacted by 20minutes.fr, Lisandro Suero was “very busy.”

109. Upon information and belief, not until January 14 (based on representations made by AFP’s counsel Joshua Kaufman to Mr. Morel’s counsel) on March 3, 2010, following an email received by Getty from Corbis, claiming exclusive rights, which was sent on to AFP Washington, a ‘KILL’ was sent, at 2:58 p.m. EST and “the 8 images were removed from Imageforum (AFP’s online source of images) and deleted from its archives. The



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Daniel Morel: “CNN is playing with people. They are doing show business with people’s lives here.”

January 28, 2010 in Interview, Photography: Non-Prison, Photojournalism | Tags: Daniel Morel, Haiti, Interview, LENSblog, New York Times



© Daniel Morel / Corbis

normal Kill procedure was then followed which consists of sending via satellite a request to kill the images and an email to all third parties including Getty to delete the images from their archives.”

110. The “Kill letter” is attached hereto as Exhibit H and instructs that “Daniel Morel AFP/Getty Images” be killed because of a “copyright dispute.” No kill letter was issued for the “Lisandro Suero AFP/Getty” images and no kill letter was issued for the remaining five (5) Iconic Images. At the time that the “kill letter” was issued, AFP/Getty knew that there was no genuine copyright dispute either between Lisandro Suero and Daniel Morel or AFP/Getty and Corbis

111. On January 14, 2010 at 4:50 p.m. EST, Vincent Amalvy e-mails Thony Belizaire stating, “it’s very important to find Daniel Morel because we used the photos he put on Twitter and our possibilities of distribution are greater than that of Corbis who claims the photos. We haven’t made any commercial use and wait for his agreement. Tell him to call me.”

112. On January 15, at 9:01 a.m., Mr. Belizaire responds, “I am continuing my efforts to find him, our common friend Chantal Regnaut is informed and will help us. Thony.”

113. On January 15 at 10:33 a.m. Vincent Amalvy responds to Mr. Belizaire, stating that “AFP had distributed the [Iconic Images], but for editorial use only. The images are blocked by Corbis. Please have Daniel Morel contact [him]. We will not sell them without his agreement. I need a written agreement from Daniel, giving us the rights

of exploitation and the conditions that he wants to place on these photos. Thank you for your help and I hope it's quick. -Vincent."

114. On or about January 22, 2010, the Iconic Images of the January 12, 2010 were made available to Corbis in high resolution for sale and were accepted*.

115. Attached hereto as Exhibit I are pages from the Corbis website showing the availability for license of Mr. Morel's Haiti Earthquake Photographs in the Corbis rights managed current news database.

The One Iconic Image of January 12, 2010

116. A
blogger Michael
David Murphy, on
January 21, 2010, in
"Does Haiti's
Earthquake call for a
new
Photojournalism"
(www.foto8.com)
referring to Iconic
Image #1 wrote:

If there's an iconic photograph from the disaster, it might belong to Daniel Morel, a Haitian photographer who lived through the earthquake, and was on-the-ground during the most desperate moments. It seems fitting that this image, made by a Haitian who's been documenting his country for the last 25 years, has been so widely published.



© Daniel Morel/ AFP-Getty

* Mr. Morel's right to pursue this action in his sole name is not disputed by Corbis and is with Corbis' consent.

117. The credit continues to falsely represent AFP/Getty as the exclusive agent for the license of Iconic Image #1.

118. In an article attached hereto as Exhibit J, downloaded from the Nikon Passion website, Iconic Image #1 is discussed by a photography critic who analyzes why it is such a powerful image of iconic quality.

119. Attached hereto as Exhibit K, are several examples from the hundreds of Infringing Iconic Image #1, distributed, sold, reproduced and licensed by AFP and Getty.

The Continuing Harm to Mr. Morel's Professional Reputation, Intellectual Property, and Financial Revenues caused by Plaintiff and Counterclaim Defendants

120. The Infringing Images compete directly with Corbis' ability to license Mr. Morel's Iconic Images, have resulted in a significant loss of licensing revenue, and dilute and diminish the value of his intellectual property.

121. On March 1, 2010, counsel for Mr. Morel wrote to AFP's legal counsel, Ms. Juliette Thiebault in it's Washington DC office:

Corbis, who now represents the Morel Photographs, has represented to me that this information has been requested, but despite the fact that six weeks has gone by, no information has been received. Corbis did not represent Mr. Morel when the Infringing Images were pirated from twitter.

I have been informed by Corbis' counsel that despite requests from Corbis, AFP has failed to respond and that AFP legal counsel has had no conversations with Corbis' Counsel. AFP has similarly failed to respond to my letter of Wednesday last week, although the claim is it was never received.

The purpose of this letter is to request that AFP cease and desist immediately from any and all use of the Morel Photographs and that it instruct its licensees, assigns and subscribers to immediately cease and desist from any and all uses of the Infringing Images.

You are also requested to provide to me on or before Thursday, March 4, 2010, printouts and other information indicating the number of subscribers who received the Infringing Images, the gross revenues received by AFP from the distribution, sale and/or licensing of the Infringing Images and the licensing history of each Infringing Image.

Finally, I request that AFP take all steps to inform Service and Content Providers to cease and desist from any reference to or display of any images relating or referencing Daniel Morel as an AFP photographer. Service and Content Providers should also be informed to take down any Haiti earthquake images by Daniel Morel with the tag AFP or AFP/Getty. Any and all uses of the Morel Photographs by AFP was and is illegal and unauthorized.

These steps must be taken immediately and confirmed in writing to me on or before March 4, 2010.

I, then, look forward to receiving complete information relevant to the infringing uses so that I can properly calculate the economic harm suffered by Daniel Morel as a result of AFP's actions.

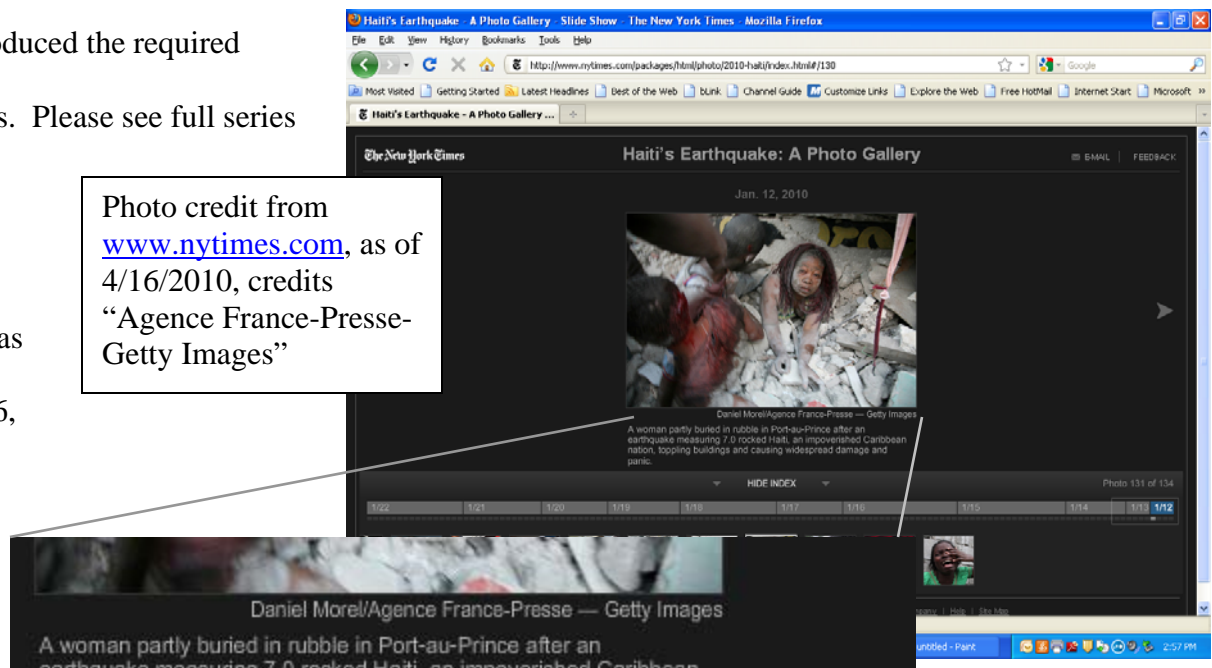
122. Mr. Morel's counsel also wrote *inter alia* cease and desist letters to the Boston Globe, the New York Times, the Presbyterian Church in Canada, The Age (Melbourne, Australia), Getty, Vanity Fair, USA Today, and the Denver Post.

123. In house counsel for each of these media outlets instructed that AFP's counsel would undertake representation of them and AFP's counsel agreed to act on their behalf.

124. Upon information and belief, neither the "Kill letter" nor the efforts of Corbis produced the required corrections. Please see full series

of Iconic
Images
displayed as
of April 16,
2010 on

Photo credit from
www.nytimes.com, as of
4/16/2010, credits
"Agence France-Presse-
Getty Images"



www.newsweek.com, the St. Louis Post Dispatch and the San Antonio Times website crediting “Lisandro Suero/AFP/Images,” attached hereto as Exhibits L1-L3, respectively.

Four out of five Iconic Images on the St. Louis Post Dispatch website still credit “Lisandro Suero/AFP/Getty Images” as of 4/16/2010.



Caption: A body lies amid rubble on January 12, 2010 in Port-au-Prince after a huge earthquake measuring 7.0 rocked the impoverished Caribbean nation of Haiti, toppling buildings and causing widespread damage and panic, officials and AFP witnesses said. A tsunami alert was immediately issued for the Caribbean region after the earthquake struck at 2153 GMT. (Lisandro Suero/AFP/Getty Images)

Photo 63 of 66



Caption: A Haitian woman is helped after being trapped in rubble on January 12, 2010 in Port-au-Prince following a huge earthquake measuring 7.0 rocked the impoverished Caribbean nation of Haiti, toppling buildings and causing widespread damage and panic, officials and AFP witnesses said. A tsunami alert was immediately issued for the Caribbean region after the earthquake struck at 2153 GMT. (Daniel Morel/AFP/Getty Images)